

THE LAW OFFICE OF CATHERINE PARK

2300 M STREET, NW
SUITE 800
WASHINGTON, D.C. 20037

PHONE: (202) 973-6479
FAX: (866) 747-7566

E-MAIL: CATHERINE.PARK@CPARKLAW.COM
WEBSITE: WWW.CPARKLAW.COM

March 10, 2008

FILED/ACCEPTED
DOCKET FILE COPY ORIGINAL
MAR 10 2008

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

RE: Filing Second Motion to Compel; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of parties Kurtis J. Kintzel, Keanan Kintzel, and all other Entities by which they do business before the Federal Communications Commission, is the original and 6 copies of the Motion to Compel Answers to Defendants' Second Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's *Second* Failure to Submit Interrogatory Responses Under Oath, in the above-referenced matter.

Sincerely,



Catherine Park, Esq.

Enclosures: Original + 6 Copies

No. of Copies rec'd
List ABCDE

0 + 6

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
MAR 10 2008
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Kurtis J. Kintzel, Keanan Kintzel, and all) EB Docket No. 07-197
Entities by which they do business before the)
Federal Communications Commission)
)
Resellers of Telecommunications Services)

To: Presiding Judge (Richard L. Sippel,
Chief ALJ)

**MOTION TO COMPEL ANSWERS TO DEFENDANTS' SECOND SET OF
INTERROGATORIES, AND MOTION FOR REMEDY FOR ENFORCEMENT
BUREAU'S SECOND FAILURE TO SUBMIT INTERROGATORY RESPONSES
UNDER OATH**

1. Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission, by and through undersigned counsel, hereby submit this Motion to Compel Answers to Defendants' Second Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's *Second* Failure to Submit Interrogatory Responses Under Oath. Defendants request that the Presiding Judge, pursuant to 47 C.F.R. § 1.323(c), compel Answers to Interrogatories Nos. 1, and 8-11, in Defendant's Second Set of Interrogatories. Defendants further request that the Presiding Judge grant an appropriate remedy, under 47 C.F.R. § 1.323(d), for the Bureau's *second* failure to submit its interrogatory responses under oath or affirmation, as required by 47 C.F.R. § 1.323(b).

Bureau's Second Failure to Submit Interrogatory Responses Under Oath

2. Defendants' Second Set of Interrogatories was filed on February 19, 2008. A copy is appended as Exhibit A. The Bureau filed its Objections and Responses to Defendants' Second Set of Interrogatories ("EB's Second Objections and Responses") on March 4, 2008. A

copy is appended as Exhibit B. Answers and objections to interrogatories must be submitted under oath or affirmation. 47 C.F.R. § 1.323(b). The Bureau's Second Objections and Responses contained no oath or affirmation, in violation of § 1.323(b). *This is the second time, in this proceeding, that the Bureau has violated this requirement.* The Bureau's Objections and Responses to Defendants' First Set of Interrogatories ("EB's First Objections and Responses") also was submitted without the oath or affirmation. *See* EB's First Objections and Responses, filed February 20, 2008.

3. In the instant proceeding, the Bureau seeks to impose penalties of "up to ... \$1,325,000" for the same omission allegedly committed by Defendants (alleged omission of a sworn statement by Kurtis J. Kintzel in submitting his January 17, 2007 response to a Bureau letter dated December 20, 2006.¹). EB's Objections and Responses, pp. 12-13. The Bureau has argued that it is "disingenuous" to contend that the Bureau is seeking "up to ... \$1,325,000" for that single alleged omission. EB's Opposition to Motion to Compel Answers to Defendants' First Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's Failure to Submit Interrogatory Responses Under Oath ("EB's Opposition"), p. 3. However, before the Bureau was confronted with its own failings with respect to the omitted sworn statements, the Bureau never acknowledged that a maximum penalty of \$1,325,000 might be considered excessive for such a trivial offense. Chastened by its own failings, the Bureau now takes the position that \$1,325,000 is a cap upon alleged "multiple"² defects in Defendants' response to the Bureau's December 20, 2006 letter of inquiry—rather than a cap upon each alleged defect. EB's Opposition, p. 3.

4. In fact, as recently as its Response to Interrogatory No. 3 in Defendants' First Set

¹ *See* Request No. 67, EB's Requests for Admission ... to Kurtis J. Kintzel, filed October 31, 2007.

² EB's Opposition, p. 3.

of Interrogatories, the Bureau asserted repeatedly that it is entitled to impose “up to ... \$ 1,325,000” for *single* acts or omissions. Specifically:

“\$130,000 per violation or each day of a continuing violation, up to a maximum of \$1,325,000 for any single act or failure to act.”³

5. The Bureau has referred to the above-stated amount, over and over again, in reference to “any single act or failure to act.” EB’s First Objections and Responses, pp. 11-13. Nowhere in the Bureau’s Responses to Defendants’ First Set of Interrogatories did the Bureau contend that it was not entitled to impose \$130,000 for each day that the alleged omission of the sworn statement by Kurtis J. Kintzel was deemed to be continuing (and, since the alleged violation occurred in 2007, the limit of \$1,325,000 likely has been reached).

6. If, as the Bureau *now* contends, in an apparent revision of its earlier position, the \$1,325,000 cap encompasses an entire series of alleged *multiple* acts in connection with the Commission’s December 20, 2006 letter of inquiry, the Bureau should have specified that in its interrogatory responses. Obtaining such a concession from the Bureau has been one of Defendants’ goals from the inception of this proceeding.⁴

7. In view whereof, Defendants must discuss the Bureau’s *second* failure to submit its interrogatory responses under oath, as required by § 1.323(b). The Bureau’s first and second failures to submit such interrogatory responses under oath, along with the Bureau’s failure to submit a July 11, 2003 interrogatory response under oath in the 2003 proceeding (EB Docket No. 03-85), comprise at least three (i.e., *multiple*) failures by the Bureau to comply fully, completely and timely with Commission regulations in actions involving Defendants.

8. The Bureau has shown itself incapable of modeling the behavior that it demands of Defendants—i.e., of submitting full, complete and timely responses to requests propounded in

³ EB’s First Objections and Responses, pp. 11-13.

⁴ See, e.g., Motion to Modify Issues, filed October 26, 2007 (Excessive Fines analysis).

Commission proceedings. Such failures by the Bureau to comply with Commission regulations have occurred *multiple* times now, on *multiple* occasions. The Bureau's only argument in defense of its failure to comply with its own rules is that its failures were "inadvertent."⁵

9. The Bureau cannot reasonably claim that Defendants' actions, on the other hand, were *deliberate*. It was impossible for Defendants to respond fully, completely and timely with respect to the 10 slamming complaints mentioned in the December 20, 2006 letter of inquiry, because the Bureau failed to forward those 10 slamming complaints along with the December 20, 2006 letter.⁶

10. The letter was sent to Kurtis J. Kintzel, who is not a lawyer. The letter was sent by an authoritative source—the Federal Communications Commission—to which Kurtis J. Kintzel has been subject since 1992. Kurtis J. Kintzel submitted a response on January 17, 2007, answering to the best of his ability without the assistance of legal counsel. Apparently follow-up emails were exchanged, in which the 10 slamming complaints were allegedly forwarded to Kurtis J. Kintzel by Brian Hendricks *after the Bureau's initial failure to do so*.⁷

11. The Bureau seems unwilling or unable to recognize that its own actions, being scattered and disorganized, are not likely to elicit orderly and organized responses. The Bureau's position seems to be that Defendants must do everything perfectly, but that the Bureau is not required to do everything perfectly.

12. The Presiding Judge may impose consequences for insufficient interrogatory responses, under § 1.323(d). Defendants respectfully request that the Presiding Judge grant an appropriate remedy caused by the Bureau's *multiple* inadvertent omissions, evidenced by its

⁵ EB's Opposition, p. 2.

⁶ Answer to Request No. 55, Supplement to Answers to Enforcement Bureau's Requests for Admission ... to Kurtis J. Kintzel, filed on January 24, 2008.

⁷ Defendants have yet to locate the 10 slamming complaints, allegedly sent via email by Brian Hendricks after the initial failure to attach them to the December 20, 2006 letter of inquiry.

latest failure to submit interrogatory responses under oath in response to Defendants' Second Set of Interrogatories. The Presiding Judge may impose procedural consequences under § 1.323(d), such as adverse findings of fact and dismissal with prejudice.

13. Dismissing the allegations of non-responsiveness to Commission inquiries would in no way prevent the Commission from actually retrieving the information sought in the first instance—the verification tapes for the 10 slamming complaints. In fact, all verification tapes in Defendants' possession were handed over to the Bureau on March 6, 2008,⁸ and Defendants have disclosed how the Bureau might obtain any missing verification tapes directly from the third-party verifier. *Id.* Defendants' diligent efforts to comply with the Bureau's numerous and often repetitive discovery requests⁹ has yielded all of the information that the Bureau has sought so far. Defendants have practically bent over backwards to convey all evidence in their possession, and will continue to do so. Defendants have nothing to hide.

14. The Bureau is the party interposing resistance in the discovery process—inter alia, by *misapplying* the parol evidence rule¹⁰ in an attempt to prevent Defendants from putting forth any kind of defense to the alleged Consent Decree violations. The Bureau also has refused to answer 8 of the 12 interrogatories propounded in Defendants' First Set of Interrogatories, and 6 of the 12 interrogatories propounded in Defendants' Second Set of Interrogatories. That is an extraordinary level of non-compliance—58 percent non-compliance.

15. For all of the foregoing reasons, Defendants respectfully request that the allegations against Defendants for failure to respond fully, completely and timely to the Commission's December 20, 2006 letter of inquiry be dismissed with prejudice.

⁸ See Responses to Enforcement Bureau's First Set of Requests for Production of Documents, duly served on March 8, 2008.

⁹ Six sets of Requests for Admission, including 68 Requests directed to Kurtis J. Kintzel individually, and 52 to Keanan Kintzel individually; a First Set of Interrogatories consisting of 52 detailed items; and a First Set of Requests for Production of Documents, consisting of 61 voluminous requests.

¹⁰ See Opposition, p. 10.

Bureau's Insufficient Objections and Responses to Interrogatory No. 1

16. Interrogatory No. 1 in Defendants' Second Set of Interrogatories seeks details about the 10 slamming complaints mentioned in the Order to Show Cause, FCC 07-165. The Bureau objects to Interrogatory No. 1 in Defendants' Second Set of Interrogatories as outside the permissible scope of discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4), as unduly vague, and on the ground that information on the 10 slamming complaints was already provided to Defendants via e-mail from Brian Hendricks on January 30, 2007. EB's Second Objections and Responses, p. 2.

17. The Bureau's mere assertion that the interrogatory violates § 1.311(b)(4) is insufficient under § 1.323(b), which requires that if an objection is submitted, "reasons for the objection shall be stated in lieu of an answer." The Bureau stated no reasons for its objection, thus the objection must be overruled.

18. The Bureau also objects on the ground that the interrogatory is "unduly vague." The interrogatory requests enumerated details about the 10 slamming complaints (dates, whether complainant was charged a switch-over fee, month that the switch-over fee was charged, and any other details available). The Bureau alleges that "any other details" is vague. EB's Second Objections and Responses, p. 2. It is not vague. The Bureau may be seeking to impose an additional requirement that interrogatories must be so highly specific that they can be answered with a simple "yes" or "no." Such a requirement is nowhere imposed by Commission regulations. There is nothing vague about an interrogatory seeking "any other details available about the slamming complaints." The Bureau's objection must be overruled and answers compelled.

19. The Bureau alleges that details about the 10 slamming complaints were provided

to Defendants already via e-mail from Brian Hendricks on January 30, 2007. Defendants received the email from Brian Hendricks, but the 10 slamming complaints have not been located. In other words, details about the 10 slamming complaints are not accessible to Defendants at this time. If Defendants had access to the information, the interrogatory would not have been propounded. Defendants request the details on the 10 slamming complaints so that Defendants can adequately prepare to meet the allegations. The Bureau can assert no reasonable justification for withholding such basic information. The Bureau must be ordered to produce the requested details about the 10 slamming complaints.

Bureau's Insufficient Objections and Responses to Interrogatory No. 8

20. Interrogatory No. 8 in Defendants' Second Set of Interrogatories asks whether provisions were considered or made with respect to the 2004 Consent Decree, to prepare for the contingency that Business Options, Inc., would be unable to continue paying the voluntary contributions due to insolvency. The Bureau objects under the attorney-client privilege and work-product doctrine.

21. The Bureau can withhold privileged information, but not all information relating to Interrogatory No. 8 is privileged. To wit, the Consent Decree was negotiated between the Commission and Business Options, Inc. The Bureau's communications with counsel for Business Options, Inc., would not be privileged. Thus the Bureau must answer Interrogatory No. 8 with respect to all communications with counsel for Business Options, Inc., and any other non-privileged communications or information. The Bureau cannot credibly assert that there were no communications with counsel for Business Options, Inc., regarding the Consent Decree. The Bureau's objection must be overruled and answers compelled.

Bureau's Insufficient Objections and Responses to Interrogatories Nos. 9, 10, and 11

22. Interrogatories Nos. 9 and 10 in Defendants' Second Set of Interrogatories request details on any long-distance providers or resellers that have ever fallen behind in their USF and/or TRS contributions, and what disposition was made of such cases. Interrogatory No. 11 requests details on long-distance providers or resellers that have ever become insolvent and/or filed for bankruptcy with a balance due and owing on any FCC-mandated obligation. The Bureau objects, inter alia, that the interrogatories are outside the permissible scope of discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4) because not within the direct personal knowledge of Commission personnel to whom the interrogatories were directed.

23. The Bureau's objection misperceives the burden on Commission personnel of answering interrogatories under § 1.311. Interrogatories are required to be served on "the appropriate bureau chief." 47 C.F.R. § 1.311(b)(2). The interrogatories "will be answered and signed by those personnel with knowledge of the facts." 47 C.F.R. § 1.311(b)(2). It is the responsibility of the bureau chief to locate those personnel with knowledge of the facts (and not necessarily "direct personal knowledge," which is dealt with below), in order to comply with § 1.311(b)(2). Defendants' Second Set of Interrogatories was addressed to the Chief, Enforcement Bureau, Kris Monteith. The Chief is not expected to have direct personal knowledge of the information requested. So long as the knowledge is within her possession, custody, and/or control, she (or her designate) has the duty to answer the interrogatories.

24. As to the issue of "direct personal knowledge," the Bureau's objection focuses on § 1.311(b)(4), which discusses interrogatories propounded upon specific Commission personnel. The Defendants' Second Set of Interrogatories is addressed to the Chief, Enforcement Bureau, Kris Monteith. Under § 1.311(b)(4), the Chief has the duty to answer the interrogatories using her direct personal knowledge. Under § 1.311(b)(2), the Chief also has the duty to answer the

interrogatories using knowledge within her possession, custody, and/or control. Both duties adhere. There is no way to avoid answering the interrogatories under § 1.311(b).

25. The Bureau further objects to the interrogatories on the grounds that publicly available information on the subject matter of the interrogatories can be located by Defendants through legal research, that non-public information is shielded, and that the interrogatories are overly broad because not limited to a reasonable period of time.

26. Defendants would be amenable to limiting the time period to the last ten years (1997-2007).

27. As to the objection about publicly available information: The overall purpose of Interrogatories Nos. 9, 10, and 11 is to discover whether alleged non-payments of USF and TRS contributions, and other FCC-mandated obligations, has been a commonplace allegation in Bureau prosecutions, and, if commonplace, against whom were such allegations instituted. Defendants would be amenable to the Bureau limiting the scope of its answers to Interrogatories Nos. 9, 10, and 11 to whether such allegations have been commonplace, relatively commonplace, or not commonplace. If commonplace or relatively commonplace, the Bureau is asked to produce names of 10 service providers or resellers against whom such charges were instituted, and to disclose the disposition of those cases.

28. The Bureau's Second Objections and Responses asserts that Interrogatories Nos. 9, 10, and 11 can be answered by Defendants by conducting legal research, and that, since the information is equally accessible to Defendants, the Bureau need not answer. EB's Second Objections and Responses, pp. 6-8. The information is not equally accessible, however. Access to the *FCC Record* database is costly for Defendants, but free of charge to the Bureau. If the Bureau had to sift through mountains of disorganized files in order to produce the requested

information, that would be a different story. But the information is already compiled and available in the *FCC Record* database. The Bureau could perform a simple search of the *FCC Record*, delimited to 1997-2007, with respect Interrogatories Nos. 9, 10, and 11. There would be no undue burden on the Bureau, while the undue burden and cost for Defendants to obtain the information would be significant. In addition, Defendants would be amenable to limiting the scope of the requested answers to those items described in the immediately preceding paragraph.

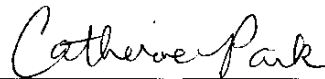
29. As to the objection regarding non-public information: The Bureau can assert no privilege under the Commission rules to avoid answering. The Bureau's assertion that the information is shielded may be relevant to certain non-public information that must be retrieved through the FOIA request process. 47 C.F.R. § 0.461. That regulation applies to requests for production of documents that Defendants will propound in the near future. However, Defendants have not asked the Bureau, in Interrogatories Nos. 9, 10, and 11, to produce any documents. Defendants have merely asked for factual information that is within the Bureau's possession, custody, and/or control. If it would be unduly burdensome to produce the requested information for the last 10 years, that would be a different story. But the information is already compiled and available through the *FCC Record* database. The burden on the Bureau would be minimal. The Bureau must use the information in its possession, custody, and/or control to answer the interrogatories.

30. The Bureau additionally objects to Interrogatory No. 11 on the ground that the information sought is only minimally relevant. With that statement, the Bureau admits that it is relevant. Relevant evidence is subject to discovery. Evidence sought through Interrogatory No. 11 would be relevant, and not just minimally, for many reasons. Defendants' affirmative case as to the alleged Consent Decree violations seeks to prove that the Consent Decree is rife with legal

and drafting errors. Answers to Interrogatory No. 11 would provide evidence as to the intent of the parties, the meaning of various provisions, whether the drafters were conscious that non-parties were included in the Consent Decree in contravention of 47 C.F.R. § 1.93 and § 1.94, etc. The information sought is relevant, and the Bureau's objection must be overruled.

31. Wherefore, in view of the foregoing, Defendants respectfully request that the aforementioned objections by the Bureau to Defendants' Second Set of Interrogatories be overruled and answers compelled to Interrogatories No. 1, 8-11. Defendants further request that an appropriate remedy be granted for the Bureau's second failure to submit its interrogatory responses under oath or affirmation.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Catherine Park". The signature is written in black ink and is positioned above a horizontal line.

Catherine Park (DC Bar # 492812)
The Law Office of Catherine Park
2300 M Street, NW, Suite 800
Washington, D.C. 20037
Phone: (202) 973-6479
Fax: (866) 747-7566
Email: contact@cparklaw.com

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing on this 10th day of March 2008, by hand-delivery, to the following:

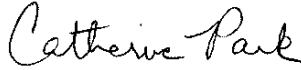
Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

And served the same day by U.S. Mail, First Class, on the following:

Richard L. Sippel, Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C861
Washington, D.C. 20554

Kris Monteith, Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 7-C723
Washington, D.C. 20554

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
Investigations & Hearings Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554



Catherine Park

Exhibit A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FILED/ACCEPTED

FEB 19 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	EB Docket No. 07-197
Entities by which they do business before the)	
Federal Communications Commission)	
)	
Resellers of Telecommunications Services)	

To: Chief, Enforcement Bureau (Kris Monteith)

DEFENDANTS' SECOND SET OF INTERROGATORIES

Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission ("the Kintzels, et al."), by and through undersigned counsel, hereby request that the Commission/Enforcement Bureau answer the following Interrogatories fully, under oath, in accordance with 47 C.F.R. § 1.323, and subject to the definitions and instructions set forth below.

Definitions and Instructions

1. "You" means the Commission, the Enforcement Bureau, their representatives, and/or agents, including counsel.
2. "Documents" means all written and/or pictorial matter, as well as computer files, however produced, and copies thereof, including but not limited to maps, correspondence, notes, blueprints, telegrams, audio recordings of any type, notes of telephone conversations or of meetings or conferences, minutes of meetings, memoranda, interoffice communications, studies, analyses, reports, results of investigations, contracts, licenses, agreements, working papers, statistical records, ledgers, books of accounts, vouchers, invoices, charts, slips, timesheets and/or

logs, computer data, stenographer's notebooks, journals or papers similar to any of the foregoing.

3. The words "and" and "or" shall be interpreted either conjunctively or disjunctively, to encompass all information within the scope of any Interrogatory.

4. These Interrogatories are deemed continuing in nature and require Supplemental Answers in the event that You learn additional facts not set forth in the original Answers or discover that information provided in the original Answers is erroneous and/or incomplete.

5. Your Answers shall be based upon information known to You or in Your possession, custody, or control.

6. When asked to identify individuals, You shall provide current information on their whereabouts, including names, titles (specify whether employed or formerly employed by the Commission), business addresses, and phone numbers. If the individuals are no longer employed by the Commission, specify the dates of their departure and current whereabouts.

7. When asked to identify documents and/or other tangible things, You shall provide the date and author, type of document/tangible thing (e.g., letter, memorandum, chart, computer file, etc.), or some other means of identifying it, its present and/or last known location, and its present and/or last known custodian. If any such document/tangible thing was, but no longer is, in Your possession, custody, or control, state what disposition was made of such document/tangible thing.

Interrogatories

1. Provide the following details on the 10 slamming complaints mentioned in the Order to Show Cause, FCC 07-165: (a) Billing telephone number of each complainant, (b) dates that each purported slamming violation took place, (c) whether the complainant was ever charged a switch-over fee by his/her local telephone company for switching to Buzz Telecom

Corp. or Business Options, Inc., and if so, the month/year that the switch-over fee was charged,
(d) any other details available about the slamming complaint.

2. Identify all documents/tangible things that the FCC intends to rely upon to prove that the 10 complainants identified in response to Interrogatory No. 1 actually had their long-distance telephone service switched to that of Buzz Telecom Corp. or Business Options, Inc.

3. Identify all documents/tangible things that the FCC intends to rely upon to prove that the 10 complainants identified in response to Interrogatory No. 1 were actually customers of Buzz Telecom Corp. or Business Options, Inc.

4. Identify all documents/tangible things that the FCC intends to rely upon to prove that any customers of Buzz Telecom Corp. or Business Options, Inc., actually had their long-distance service discontinued.

5. Identify all customers of Buzz Telecom Corp. and/or Business Options, Inc., who filed a complaint with the FCC because they were disconnected from Buzz Telecom Corp. and/or Business Options, Inc., without notification and/or unable to make outbound long-distance telephone calls.

6. Identify all documents/tangible things that the FCC intends to rely upon to prove that such disconnects and/or lack of notification, as described in the responses to Interrogatory No. 5, actually took place.

7. Identify all evidence and/or legal theories that the FCC intends to rely upon to prove that the Kintzels, et al., are liable for the discontinuation of service mentioned in the Order to Show Cause, rather than Qwest.

8. Disclose whether provisions were considered or made with respect to the 2004 Consent Decree, to prepare for the contingency that Business Options, Inc., would be unable to

continue paying the voluntary contributions due to insolvency.

9. Disclose all long-distance providers or resellers that have ever fallen behind in Universal Service Fund contributions, and describe all actions taken against them by the Commission and what resolution was reached.

10. Disclose all long-distance providers or resellers that have ever fallen behind in Telecommunications Relay Service contributions, and describe all actions taken against them by the Commission and what resolution was reached.

11. Disclose whether any long-distance provider or reseller has ever become insolvent and/or filed for bankruptcy with a balance due and owing on any FCC-mandated obligation, and describe all actions taken against them by the Commission and what resolution was reached.

12. Disclose whether the Enforcement Bureau is seeking to impose liability on Kurtis J. and Keanan Kintzel individually for all of the alleged violations described in the Order to Show Cause, FCC 07-165, or only for select alleged violations. If only for select alleged violations, identify which select alleged violations. (Identification of the alleged violation by category/descriptor is sufficient. For example, is the Bureau seeking to impose liability on Kurtis J. and Keanan Kintzel individually for the alleged slamming violations? For the alleged Consent Decree violations? Or only for the alleged discontinuation of service?)

13. With respect to Your responses to Interrogatory No. 12, disclose the legal theories You intend to rely upon for imposing individual liability on Kurtis J. and Keanan Kintzel, *rather than on their companies (or, in addition to their companies)*, as to each of the alleged violations for which You are seeking to impose individual liability.

Respectfully Submitted,

Catherine Park

Catherine Park (DC Bar # 492812)
The Law Office of Catherine Park
2300 M Street, NW, Suite 800
Washington, D.C. 20037
Phone: (202) 973-6479
Fax: (866) 747-7566
Email: contact@cparklaw.com

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing on this 19th day of February 2008, by hand delivery, to the following:

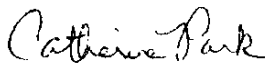
Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

And served by U.S. Mail, First Class, on the following:

Kris Monteith, Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 7-C723
Washington, D.C. 20554

Richard L. Sippel, Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C861
Washington, D.C. 20554

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
Investigations & Hearings Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554



Catherine Park

Exhibit B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

MAR - 4 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before)	NAL/Acct. No. 200732080029
the Federal Communications Commission)	
)	FRN No. 0007179054
)	

To: Kurtis J. Kintzel, Keanan Kintzel, and all
Entities by which they do business before
the Federal Communications Commission

ENFORCEMENT BUREAU'S OBJECTIONS AND RESPONSES
TO DEFENDANTS' SECOND SET OF INTERROGATORIES

On February 19, 2008, Defendants Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission ("Defendants"), filed their Second Set of Interrogatories ("Interrogatories") in the above-captioned proceeding. The Enforcement Bureau ("Bureau"), pursuant to Section 1.323(b) of the Commission's rules, 47 C.F.R. § 1.323(b), hereby submits its objections and responses to the Interrogatories. The responses were drafted by counsel of record for the Bureau, in consultation with Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission.

The Bureau notes that discovery in this proceeding has only just commenced. The Bureau reserves the right to supplement its responses to the Interrogatories based upon information obtained during the course of discovery.

Objections

1. By the subject Interrogatories, Defendants seek information from the Bureau

No. of Copies rec'd 0+6
List ABCDE

that is neither relevant to any issue designated in the captioned proceeding nor is reasonably calculated to lead to the discovery of admissible evidence.

2. By the subject Interrogatories, Defendants seek discovery from the Bureau that is outside the purview of permissible discovery under Section 1.311(b)(4) of the Commission's rules, 47 C.F.R. § 1.311(b)(4).

3. By the subject Interrogatories, Defendants improperly seek to have the Bureau engage in legal argument and provide characterization of evidence.

Responses

1. Provide the following details on the 10 slamming complaints mentioned in the Order to Show Cause, FCC 07-165: (a) Billing telephone number of each complainant, (b) dates that each purported slamming violation took place, (c) whether the complainant was ever charged a switch-over fee by his/her local telephone company for switching to Buzz Telecom Corp. or Business Options, Inc., and if so, the month/year that the switch-over fee was charged, (d) any other details available about the slamming complaint.

Response: The Bureau objects to Interrogatory No. 1 to the extent the information sought is outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). The Bureau further objects to subpart (d) of Interrogatory No. 1 – asking for “any other details available about the slamming complaint” – as unduly vague. The Bureau also objects to Interrogatory No. 1 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants, which documents are likely to provide the details sought by Interrogatory No. 1. Notwithstanding and subject to the foregoing objections, the Bureau states that certain of the information sought by Interrogatory No. 1 is available from the copies of the slamming complaints forwarded to Kurtis Kintzel via e-mail from Brian Hendricks, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, on January 30, 2007. The Bureau also has the following information:

Irene Mowan: (a) (541) 276-9135; (b) on or about August 8, 2006; and (c) a “Buzz Activation Fee” of \$29.95 appeared on a bill dated August 28,

2006, as well as a "Super Saver Montly Fee" of \$4.90 and a "Carrier Cost Recover Fee" of \$4.95.

Mindy Stoltzfus: (a)) (712) 732-0991; (b) on or about September 11, 2006; and (c) a bill dated 10/9/06 reflects a "past due balance" of \$39.80, a "Carrier Recovery Fee" of \$4.95 and a "Monthly Service Fee" of \$4.90.

2. Identify all documents/tangible things that the FCC intends to rely upon to prove that the 10 complainants identified in response to Interrogatory No. 1 actually had their longdistance telephone service switched to that of Buzz Telecom Corp. or Business Options, Inc.

Response: The Bureau objects to Interrogatory No. 2 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that it has obtained 25 pages of documents from Gail Perry, who lodged one of the ten referenced complaints on behalf of her mother, Irene Mowan, as well as 14 pages of documents from Mindy Stoltzfus. The Bureau has no additional non-privileged documents at this time.

3. Identify all documents/tangible things that the FCC intends to rely upon to prove that the 10 complainants identified in response to Interrogatory No. 1 were actually customers of Buzz Telecom Corp. or Business Options, Inc.

Response: The Bureau objects to the use of the term "customers" in Interrogatory No. 3, as that term connotes the existence of a mutually agreed-upon business relationship. The Bureau further objects to Interrogatory No. 3 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that it has obtained 25 pages of documents from Gail Perry, who lodged one of the ten referenced complaints on behalf of her mother, Irene Mowan. The Bureau has no additional non-privileged documents at this time.

4. Identify all documents/tangible things that the FCC intends to rely upon to prove that any customers of Buzz Telecom Corp. or Business Options, Inc., actually had their long-distance service discontinued.

Response: The Bureau objects to Interrogatory No. 4 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that the following documents currently in the Bureau's possession contain relevant information:

- Defendants' responses to requests for admissions and discovery requests propounded in the current hearing proceeding.
- The December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Keanan Kintzel, Business Options, Inc.
- Documents provided to the Commission by BOI and/or Buzz in connection with the January 17, 2007 response to the December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Keanan Kintzel, Business Options, Inc.
- Documents attached as exhibits to the Bureau's Requests for Admission of Facts and Genuineness of Documents to the Defendants.
- January 22, 2007 deposition of Kurtis Kintzel in the matter captioned *Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom*, Case No. 06-1443-TP-UNC, before the Public Utilities Commission of Ohio.
- February 26, 2007 deposition of Steve Hansen, on behalf of Qwest Communications Corp., in the matter captioned *Rule Nisi Proceeding in the Matter of Buzz Telecom, Business Options, Inc., UMCC Holdings, Inc., and Ultimate Medium Communications Corporation: Allegation of Violation(s) of Georgia Public Service Commission Rules and the Telecommunications Marketing Act of 1998*, Docket No. 15968-U.